

June 2, 2017

via e-mail and U.S. mail

Eric J. Wilson
Deputy Director for Enforcement and Homeland Security
Emergency and Remedial Response Division
EPA Region II, Raritan Depot
2890 Woodbridge Avenue
Mail Code: MS211
Edison, NJ 08837-3679

Re: Diamond Alkali Superfund Site – Cash Out Settlements, Lower 8.3 Miles of Passaic (OU2)

Dear Mr. Wilson,

We represent Occidental Chemical Corporation (“Occidental”) and Glenn Springs Holdings, Inc. with regard to the Diamond Alkali Superfund Site (“Site”).

We are responding to your May 17, 2017 letter regarding potential cash out settlements for PRPs with regard to Operable Unit 2, the Lower 8.3 miles of the Passaic River. In your May 17 letter, EPA solicited further information on proposed settling parties if we believed they should not have been included in the list of 20 cash-out parties. By this letter, Occidental is providing EPA with additional information concerning the following cash out PRPs: Alcan Corporation (now Novelis Corporation) (“Alcan”), Mallinckrodt, Inc. (“Mallinckrodt”), and Wyeth.

Alcan

Occidental provides the following information concerning Alcan’s potential liability for discharges of hazardous substances at this site and directly into the lower 8.3 miles of the Passaic River and requests that EPA reconsider its decision regarding this discharger and remove them from the cash out settlement offer program.

Alcan operated a plant on the eastern shore of the Passaic River at River Mile 1.7 from no later than 1965 until the late 1970s. Alcan discharged hazardous substances directly to the Passaic via five outlets from its facility, as documented by the New Jersey Department of Health (“NJDOH”) in 1969.¹ Alcan was issued a cease and desist Order from NJDOH on October 3,

¹ Proceedings of the Conference in the Matter of Pollution of the Interstate Waters of the Hudson River and Its Tributaries- New York—New Jersey, sponsored by the US Department of the Interior and Federal Water Pollution Control Administration, at KLL030030-30031 (Nov. 25, 1969).

1969.² The full range of substances contained in Alcan's direct discharge is not yet known, but NJDOH documented at least two hazardous substances in the discharge: chromium and cyanide.³ Chromium and cyanide, along with cadmium, lead, mercury, nickel, zinc, and PAHs, were found in Passaic River sediment core samples taken in close proximity to Alcan's discharge point.⁴ The attached report is a summary of currently-available information regarding Alcan's discharge of hazardous substances to the Passaic.

Based on Alcan's documented direct discharges to the Passaic River, additional information and sampling is warranted to determine Alcan's potential liability at the Site. Accordingly, Occidental requests that Alcan be excluded from EPA's cash out settlement.

Mallinckrodt and Wyeth

Your May 17th 2017 letter states: "if EPA learns that a party receiving an early cash out offer is responsible for another facility that released hazardous substances to the Lower Passaic River, potential liability associated with that other facility would not be covered by this cash out settlement."

Mallinckrodt and Wyeth are each responsible for other facilities that are likely the source of hazardous substances discharged to the Lower Passaic River. These other Mallinckrodt and Wyeth facilities, described below, should be expressly excluded from any cash out settlement. Occidental requests that the following identified sites be expressly excluded from any cash out settlement.

Mallinckrodt

Mallinckrodt's facility at 165-167 Main Street, Lodi, New Jersey, is the listed facility for EPA's proposed cash out settlement.⁵ Mallinckrodt has operated (from circa 1887 to the present) a second facility located at 223 West Side Avenue, Jersey City, New Jersey, near the mouth of the Hackensack River on Newark Bay. Mallinckrodt's Jersey City facility likely directly discharged hazardous substances to the Newark Bay and Hackensack River via the sewer system. Due to tidal movements, those hazardous substances may be present in the sediments of the Lower 8.3 miles of the Passaic.

Accordingly, Occidental requests that EPA expressly limit any cash out settlement with Mallinckrodt to its facility at 165-167 Main Street in Lodi. Occidental can provide EPA

² Passaic River Study Area, Potentially Responsible Parties, Alcan Aluminum Corp. Of America, at 3 (1993), available at <https://semspub.epa.gov/work/02/84031.pdf>.

³ U.S. Department of the Interior Report on the Quality of the interstate Waters of the Lower Passaic River and Upper and Lower Bays of New York Harbor, at NOV0000067 (Nov. 1969); *see also* Alcan Site Nexus Package, as part of the "Tierra Solutions' Nexus Documents" made available in the NJDEP Passaic River Litigation, at 4, available at <http://www.nj.gov/dep/passaicdocs/docs/3rd-PartyComplaintNexusPackages/3rd-PartyComplaintBNexus/AlcanSite.pdf>.

⁴ Passaic River Study Area, Potentially Responsible Parties, Alcan Aluminum Corp. Of America, at 1 (1993), available at <https://semspub.epa.gov/work/02/84031.pdf>.

⁵ Letter from EPA to Cash-Out Settlement Parties, at 25 (March 30, 2017).

additional information regarding Mallinckrodt's Jersey City facility upon request.

Wyeth

Wyeth's facility at 697 Route 46, Clifton, New Jersey, is the listed facility for EPA's proposed cash out settlement.⁶ Wyeth also has potential liability for the former Consolidated Color & Chemical Company (CCC) facility located at 62-70 Lister Avenue, at River Mile 3 of the Passaic River. Wyeth, which changed its name from American Home Products Corporation in 2002, is a successor to CCC.⁷ CCC owned a portion on the Sherwin Williams property from 1908 to 1965 and is a potential contributor of hazardous substances at the Site, including dioxin.⁸

Accordingly, Occidental requests that EPA expressly limit any cash out settlement with Wyeth to its facility at 697 Route 46 in Clifton. Occidental can provide EPA additional information regarding the CCC facility upon request.

We would like to meet with you to discuss this further and we will contact you to request a meeting. Until then please do not hesitate to contact me if you have any questions or seek additional information regarding the above.

Sincerely,
Langsam Stevens Silver & Hollaender LLP



Larry Silver

Enclosure: Alcan Corporation PRP Data Extraction Form

cc: Frances Zizila, EPA
Juan Fajardo, EPA

⁶ *Id.*

⁷ U. S. SEC Form 10K filing for American Home Products, for fiscal year ending 12/31/1994.

⁸ Dioxin contamination in soil was discovered in the former CCC building foundation at depths up to 8 feet below ground surface (bgs). Preliminary Assessment/Site Investigation/Remedial Investigation Report, ISRA Case No. E99382 The Sherwin Williams Newark Facility Volume I (Text and Tables) prepared by Roy F. Weston, Inc.